



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 93713 File No. SR-NASDAQ-2021-091]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Certain Annual Listing Fees to be Implemented on January 1, 2022

December 3, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify certain listing fees. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2022.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the Exchange's all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.

Currently, for companies listed on the Capital Market, other than, in part, ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from \$44,000 to \$79,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from \$44,000 to \$53,000; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from \$32,000 to \$39,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part, ADRs, Closed-end Funds and Limited Partnerships ranges from \$47,000 to \$163,000; for ADRs the all-inclusive annual fee ranges from \$47,000 to \$84,000; and for Limited Partnerships the all-inclusive annual fee ranges from \$39,500 to \$81,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from \$32,000 to \$105,000. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.³

³ REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. See Listing Rules 5910(b)(2) and 5920(b)(2).

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,⁴ effective January 1, 2022:

Global/Global Select Markets

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2022
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$47,000	\$48,000
	10+ to 50 million shares	\$58,000	\$59,500
	50+ to 75 million shares	\$79,000	\$81,000
	75+ to 100 million shares	\$105,000	\$107,500
	100+ to 125 million shares	\$131,000	\$134,500
	125+ to 150 million shares	\$142,000	\$145,500
	Over 150 million shares	\$163,000	\$167,000
ADRs	Up to 10 million ADRs and other listed equity securities	\$47,000	\$48,000
	10+ to 50 million ADRs and other listed equity securities	\$53,000	\$54,500
	50+ to 75 million ADRs and other listed equity securities	\$63,000	\$64,500

⁴ The proposed fee change reflects about a 2.5% increase rounded to the nearest \$500.

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2022
	Over 75 million ADRs and other listed equity securities	\$84,000	\$86,000
Closed-end Funds	Up to 50 million shares	\$32,000	\$33,000
	50+ to 100 million shares	\$53,000	\$54,500
	100+ to 250 million shares	\$79,000	\$81,000
	Over 250 million shares	\$105,000	\$107,500
Limited Partnerships	Up to 75 million shares	\$39,500	\$40,500
	75+ to 100 million shares	\$53,000	\$54,500
	100+ to 125 million shares	\$65,500	\$67,000
	125+ to 150 million shares	\$70,500	\$72,500
	Over 150 million shares	\$81,500	\$83,500

Capital Market

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2021
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$44,000	\$45,000
	10+ to 50 million shares	\$58,000	\$59,500
	Over 50 million shares	\$79,000	\$81,000

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2021
ADRs	Up to 10 million ADRs and other listed equity securities	\$44,000	\$45,000
	Over 10 million ADRs and other listed equity securities	\$53,000	\$54,500
Closed-end Funds	Up to 50 million shares	\$32,000	\$33,000
	50+ to 100 million shares	\$53,000	\$54,500
	100+ to 250 million shares	\$79,000	\$81,000
	Over 250 million shares	\$105,000	\$107,500
Limited Partnerships	Up to 75 million shares	\$32,000	\$33,000
	Over 75 million shares	\$39,500	\$40,500

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to \$107,500 and the maximum fee applicable to a REIT Family listed on the Nasdaq Global Market and the Nasdaq Capital Market to \$167,000 and \$81,000, respectively, to reflect the proposed fee change for other equity securities, as described above.⁵

Nasdaq also proposes to update the all-inclusive annual listing fees for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, (“Acquisition Companies”) listing on the Nasdaq Global Market to continue to keep such fees identical to the fees the Capital Market Acquisition Companies are charged.⁶

⁵ See footnote 3 above.

⁶ As proposed, Nasdaq would update Rule 5910(b)(2)(F) to have the following all-inclusive annual fee schedule applicable to Global Market Acquisition Companies, based

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2022.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees⁹ as set forth above because of the increased costs incurred by Nasdaq since it

on the number of shares outstanding: up to 10 million shares outstanding, \$45,000; between 10,000,001 and 50 million shares outstanding, \$59,500; over 50 million shares outstanding, \$81,000. These are the same proposed fees charged Capital Market Acquisition Companies under Rule 5920(b)(2)(A). See Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (SR-NASDAQ-2021-055). In this filing Nasdaq explained its belief that Acquisition Companies listed on the Nasdaq Global Market receive the same services as Acquisition Companies listed on the Nasdaq Capital Market making it appropriate for Nasdaq to charge such companies the same fees.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ Effective January 1, 2021, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the

established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies as well as the technology and the virtual experience available with the Nasdaq MarketSite. Nasdaq has also invested to create additional outdoor event space at its New York Headquarters, and separately, to secure a license that can be used by listed companies to hold events in Times Square. Internationally, Nasdaq's offices in London, Beijing, Toronto and Sydney have been upgraded to a modern design with new meeting rooms equipped with technology that houses the digital equipment needed for remote conferencing, presentations, collaborative review, or displays and signage thus enhancing the listed companies experience.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees while rounding the increase to the nearest \$500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to \$500.

The proposed change to update the fees applicable to Acquisition Companies listed on the Nasdaq Global Market, update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers, and update the maximum fee applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the

Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 90519 (November 25, 2020), 85 FR 77324 (December 1, 2020) (SR–NASDAQ–2020–072).

proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely reflects the change in fees without changing the substance of the rule.¹⁰

Finally, Nasdaq notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.¹¹ In such an environment, Nasdaq must continually review its fees to assure that they remain competitive.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues, both within the U.S. and internationally. For this reason, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹²

¹⁰ See Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (explaining, among other things, why Nasdaq believes that it is not unfairly discriminatory to charge Acquisition Companies listed on the Nasdaq Global Market the same fees as fees charged Acquisition Companies listed on the Nasdaq Capital Market). See also footnote 6, above.

¹¹ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-091 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2021-091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-091 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Assistant Secretary.

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¹³ 17 CFR 200.30-3(a)(12).